

**Executive Summary – Enforcement Matter – Case No. 46436**  
**Rainbow Landscape Materials, LLC**  
**RN105695563**  
**Docket No. 2013-0511-WQ-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

WQ

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

Rainbow Landscape Materials, 3916 East Highway 67, Rainbow, Somervell County

**Type of Operation:**

Construction site

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

**Texas Register Publication Date:** August 23, 2013

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$9,435

**Amount Deferred for Expedited Settlement:** \$1,887

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$1,258

**Total Due to General Revenue:** \$6,290

Payment Plan: 5 payments of \$1,258 each

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Satisfactory

Site/RN - Satisfactory

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2011

**Executive Summary – Enforcement Matter – Case No. 46436**  
**Rainbow Landscape Materials, LLC**  
**RN105695563**  
**Docket No. 2013-0511-WQ-E**

***Investigation Information***

**Complaint Date(s):** January 14, 2013

**Complaint Information:** Complainant alleged that sediment was leaving the site

**Date(s) of Investigation:** January 24, 2013

**Date(s) of NOE(s):** March 08, 2013

***Violation Information***

1. Failed to post the construction site notice at the Site in a location where it is safely and readily available for viewing by the general public, local, state, and federal authorities, prior to commencing construction, and to maintain the notice at that location until completion of the construction activity [Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR150000, Part II, Section E.2.(b), Obtaining Authorization to Discharge, and 30 TEX. ADMIN. CODE §281.25(a)(4)].
2. Failed to make the stormwater pollution prevention plan ("SWP3") readily available at the time of an on-site inspection [TPDES General Permit No. TXR150000, Part III, Section D.1., Plan Review and Making Plans Available, and 30 TEX. ADMIN. CODE §281.25(a)(4)].
3. Failed to include a description of the intended schedule or sequence of activities that will disturb soils for major portions of the Site in the SWP3 [TPDES General Permit No. TXR150000, Part III, Section F.1.(c), Contents of SWP3, and 30 TEX. ADMIN. CODE §281.25(a)(4)].
4. Failed to include data describing the soil or the quality of any discharge from the Site in the SWP3 [TPDES General Permit No. TXR150000, Part III, Section F.1.(e), Contents of SWP3, and 30 TEX. ADMIN. CODE §281.25(a)(4)].
5. Failed to include a map showing the general location of the Site in the SWP3 [TPDES General Permit No. TXR150000, Part III, Section F.1.(f), Contents of SWP3, and 30 TEX. ADMIN. CODE §281.25(a)(4)].
6. Failed to include a detailed site map in the SWP3 [TPDES General Permit No. TXR150000, Part III, Section F.1.(g), Contents of SWP3, and 30 TEX. ADMIN. CODE §281.25(a)(4)].
7. Failed to properly maintain control measures. Specifically, the silt fence located on the south side of the property had fallen down and large patches of vegetation had not

**Executive Summary – Enforcement Matter – Case No. 46436**  
**Rainbow Landscape Materials, LLC**  
**RN105695563**  
**Docket No. 2013-0511-WQ-E**

been established on the slope [TPDES General Permit No. TXR150000, Part III, Section F.2.(a)(ii), General Requirements, and 30 TEX. ADMIN. CODE §281.25(a)(4)].

8. Failed to inspect disturbed areas of the construction Site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, discharge locations, and structural controls for evidence of, or the potential for, pollutants entering the drainage system. Specifically, a review of the bi-weekly site inspection reports revealed that the site inspections were not conducted for solid waste, hazardous waste, sanitary/septic, offsite storage erosion controls, hazardous materials storage, and curb inlet protection for the period of June 1, 2011 through January 24, 2013 [TPDES General Permit No. TXR150000, Part III, Section F.7.(a), Inspection of Controls, and 30 TEX. ADMIN. CODE §281.25(a)(4)].

9. Failed to prevent the discharge of sediment into or adjacent to water in the state. Specifically, the disturbed area had not been properly stabilized and sufficient erosion controls were not utilized, resulting in sediment leaving the Site and impacting nearby property. [TEX. WATER CODE § 26.121(a)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

Respondent has implemented the following corrective measures:

- a. By February 11, 2013, began making the SWP3 readily available at the Site;
- b. By February 22, 2013:
  - i. Posted a construction site notice at the Site in a location where it is safely and readily available for viewing; and
  - ii. Included a detailed site map in the SWP3.

**Technical Requirements:**

The Order will require Respondent to:

- a. Within 15 days:
  - i. Include a description of the intended schedule or sequence of activities that will disturb soils for major portions of the Site in the SWP3;
  - ii. Include data describing the soil or the quality of any discharge from the Site in the SWP3; and

**Executive Summary – Enforcement Matter – Case No. 46436**  
**Rainbow Landscape Materials, LLC**  
**RN105695563**  
**Docket No. 2013-0511-WQ-E**

- iii. Include a map showing the general location of the Site in the SWP3.
- b. Within 30 days, begin inspecting disturbed areas of the Site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, discharge locations, and structural controls for evidence of, or the potential for, pollutants entering the drainage system;
- c. Within 45 days, repair the silt fence and establish vegetation on the slope;
- d. Within 60 days, develop and implement procedures to eliminate the reoccurrence of discharges from the Site by stabilizing the disturbed area and utilizing erosion control measures; and
- e. Within 75 days, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos.2.a. through d.

***Litigation Information***

**Date Petition(s) Filed:** N/A  
**Date Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A  
**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A  
**TCEQ Enforcement Coordinator:** Jorge Ibarra, P.E., Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5890; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456  
**TCEQ SEP Coordinator:** N/A  
**Respondent:** Oscar Rohne, Owner, Rainbow Landscape Materials, LLC, 9925 Tantarra Drive, Burleson, Texas 76028  
**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

<b>DATES</b>	<b>Assigned</b>	11-Mar-2013	<b>Screening</b>	13-Mar-2013	<b>EPA Due</b>	
	<b>PCW</b>	14-Mar-2013				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Rainbow Landscape Materials, LLC		
<b>Reg. Ent. Ref. No.</b>	RN105695563		
<b>Facility/Site Region</b>	4-Dallas/Fort Worth	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	46436	<b>No. of Violations</b>	6
<b>Docket No.</b>	2013-0511-WQ-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Jorge Ibarra, P.E.
		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit Minimum</b>		\$0	<b>Maximum</b>
			\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$9,375
---	-------------------	---------

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$468
---------------------------	------------------	--------------------------------	-------

Notes: Enhancement for one NOV with same/similar violations.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
--------------------	----	------------------	-------------------	-----

Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$624
--	-------------------	-------

<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
-------------------------	-------------------	-------------------	-----

Total EB Amounts \$335  
Approx. Cost of Compliance \$4,600  
\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$9,219
-----------------------------	-----------------------	---------

<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	2.3%	<b>Adjustment</b>	\$216
---	------	-------------------	-------

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost associated with Violation No. 5.

<b>Final Penalty Amount</b>	\$9,435
-----------------------------	---------

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$9,435
-----------------------------------	-------------------------------	---------

<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$1,887
-----------------	-----------------	-------------------	----------

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$7,548
------------------------	---------

Screening Date 13-Mar-2013

Docket No. 2013-0511-WQ-E

PCW

Respondent Rainbow Landscape Materials, LLC

Policy Revision 3 (September 2011)

Case ID No. 46436

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105695563

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one NOV with same/similar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, &amp; 7) 5%

## &gt;&gt; Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 5%

Screening Date 13-Mar-2013

Docket No. 2013-0511-WQ-E

PCW

Respondent Rainbow Landscape Materials, LLC

Policy Revision 3 (September 2011)

Case ID No. 46436

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105695563

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 1

Rule Cite(s) Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR150000, Part II, Section E.2.(b), Obtaining Authorization to Discharge, and 30 Tex. Admin. Code § 281.25(a)(4)

Violation Description Failed to post the construction site notice at the Site in a location where it is safely and readily available for viewing by the general public, local, state, and federal authorities, prior to commencing construction, and to maintain the notice at that location until completion of the construction activity.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0.0%
Potential				

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	X			5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

## Violation Events

Number of Violation Events 1 Number of violation days 1

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$1,250

One single event is recommended.

## Good Faith Efforts to Comply

25.0% Reduction

\$312

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes The Respondent achieved compliance by February 22, 2013 for this violation.

Violation Subtotal \$938

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$1,024

This violation Final Assessed Penalty (adjusted for limits) \$1,024

# Economic Benefit Worksheet

**Respondent** Rainbow Landscape Materials, LLC

**Case ID No.** 46436

**Reg. Ent. Reference No.** RN105695563

**Media** Water Quality

**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

**Item Cost** **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**  
**Item Description** No commas or \$

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$200	24-Jan-2013	22-Feb-2013	0.08	\$1	n/a	\$1

**Notes for DELAYED costs**

Estimated cost to post the required notice at the construction Site. Date required is the investigation date, and the final date is the compliance date.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$200

**TOTAL**

\$1



Screening Date 13-Mar-2013

Docket No. 2013-0511-WQ-E

PCW

Respondent Rainbow Landscape Materials, LLC

Policy Revision 3 (September 2011)

Case ID No. 46436

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105695563

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 2

Rule Cite(s)

TPDES General Permit No. TXR150000, Part III, Section D.1., Plan Review and Making Plans Available, and 30 Tex. Admin. Code § 281.25(a)(4)

Violation Description

Failed to make the storm water pollution prevention plan ("SWP3") readily available at the time of an on-site inspection.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0.0%
Potential				

## &gt;&gt; Programmatic Matrix

Falsification				Percent
	Major	Moderate	Minor	
	x			5.0%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

## Violation Events

Number of Violation Events 1 Number of violation days 1

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,250

One single event is recommended.

## Good Faith Efforts to Comply

25.0% Reduction

\$312

	Before NOV		NOV to EDPRP/Settlement Offer
	Extraordinary	Ordinary	
		x	
	N/A		(mark with x)

Notes

The Respondent achieved compliance by February 11, 2013 for this violation.

Violation Subtotal \$938

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,024

This violation Final Assessed Penalty (adjusted for limits) \$1,024

# Economic Benefit Worksheet

**Respondent** Rainbow Landscape Materials, LLC

**Case ID No.** 46436

**Reg. Ent. Reference No.** RN105695563

**Media** Water Quality

**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$200	24-Jan-2013	11-Feb-2013	0.05	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost to maintain the SWP3 readily available at the Site. Date required is the investigation date, and the final date is the compliance date.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$200

**TOTAL**

\$0

Screening Date 13-Mar-2013

Docket No. 2013-0511-WQ-E

PCW

Respondent Rainbow Landscape Materials, LLC

Policy Revision 3 (September 2011)

Case ID No. 46436

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105695563

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 3

Rule Cite(s)

TPDES General Permit No. TXR150000, Part III, Section F.1.(c), (e), (f), and (g),  
Contents of SWP3, and 30 Tex. Admin. Code § 281.25(a)(4)

Violation Description

Failed to include a description of the intended schedule or sequence of activities that  
will disturb soils for major portions of the Site, data describing the soil or the quality  
of any discharge from the Site, a map showing the general location of the Site, and  
a detailed site map in the SWP3.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
		x	

Percent 2.5%

Matrix  
Notes

30 to 70% of the rule requirement was not met.

Adjustment \$24,375

\$625

## Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$625

One single event is recommended.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV		NOV to EDPRP/Settlement Offer
	Extraordinary	Ordinary	
N/A	x	(mark with x)	

Notes The Respondent does not meet the good faith criteria for  
this violation.

Violation Subtotal \$625

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$26

Violation Final Penalty Total \$672

This violation Final Assessed Penalty (adjusted for limits) \$672

## Economic Benefit Worksheet

**Respondent** Rainbow Landscape Materials, LLC

**Case ID No.** 46436

**Reg. Ent. Reference No.** RN105695563

**Media** Water Quality

**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	24-Jan-2013	1-Aug-2013	0.52	\$26	n/a	\$26

**Notes for DELAYED costs**

Estimated cost to include in the SWP3 a description of the intended schedule or sequence of activities that will disturb soils for major portions of the Site, data describing the soil or the quality of any discharge from the Site, a map showing the general location of the Site, and a detailed site map. Date required is the investigation date and the final date is the anticipated compliance date.

### Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$1,000

**TOTAL**

\$26

Screening Date 13-Mar-2013

Docket No. 2013-0511-WQ-E

PCW

Respondent Rainbow Landscape Materials, LLC

Policy Revision 3 (September 2011)

Case ID No. 46436

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105695563

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 4

Rule Cite(s)

TPDES General Permit No. TXR150000, Part III, Section F.2.(a)(ii), General Requirements, and 30 Tex. Admin. Code § 281.25(a)(4)

Violation Description

Failed to properly maintain control measures. Specifically, the silt fence located on the south side of the property had fallen down and large patches of vegetation had not been established on the slope.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

	Major	Moderate	Minor
Release			
Actual			
Potential		x	

Percent 5.0%

## &gt;&gt; Programmatic Matrix

	Major	Moderate	Minor
Falsification			

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

## Violation Events

Number of Violation Events 1

48 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,250

One quarterly event is recommended from the investigation date of January 24, 2013 to the screening date of March 13, 2013.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$30

Violation Final Penalty Total \$1,343

This violation Final Assessed Penalty (adjusted for limits) \$1,343

# Economic Benefit Worksheet

**Respondent** Rainbow Landscape Materials, LLC

**Case ID No.** 46436

**Reg. Ent. Reference No.** RN105695563

**Media** Water Quality

**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	24-Jan-2013	1-Sep-2013	0.60	\$30	n/a	\$30

**Notes for DELAYED costs**

Estimated cost to repair the silt fence and establish vegetation on the slope. Date required is the investigation date and the final date is the anticipated compliance date.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$1,000

**TOTAL**

\$30

Screening Date 13-Mar-2013

Docket No. 2013-0511-WQ-E

PCW

Respondent Rainbow Landscape Materials, LLC

Policy Revision 3 (September 2011)

Case ID No. 46436

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105695563

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 5

Rule Cite(s)

TPDES General Permit No. TXR150000, Part III, Section F.7.(a), Inspection of Controls, and 30 Tex. Admin. Code § 281.25(a)(4)

Violation Description

Failed to inspect disturbed areas of the construction Site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, discharge locations, and structural controls for evidence of, or the potential for, pollutants entering the drainage system. Specifically, a review of the bi-weekly Site inspection reports revealed that the site inspections were not conducted for solid waste, hazardous waste, sanitary/septic, offsite storage erosion controls, hazardous materials storage, and curb inlet protection for the period of June 1, 2012 through January 24, 2013.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential		x	

Percent 5.0%

## &gt;&gt; Programmatic Matrix

	Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

## Violation Events

Number of Violation Events 3

237 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$3,750

Three quarterly events are recommended for the period of June 1, 2012 through January 24, 2013 when the Site inspections were not conducted.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDP RP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$230

Violation Final Penalty Total \$4,030

This violation Final Assessed Penalty (adjusted for limits) \$4,030

# Economic Benefit Worksheet

**Respondent** Rainbow Landscape Materials, LLC

**Case ID No.** 46436

**Reg. Ent. Reference No.** RN105695563

**Media** Water Quality

**Violation No.** 5

Percent Interest	Years of Depreciation
5.0	15

**Item Cost** **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**  
**Item Description** No commas or \$

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	24-Jan-2013	15-Aug-2013	0.56	\$14	n/a	\$14

**Notes for DELAYED costs**

Estimated cost to begin properly conducting the required inspections of control measures at the Site. Date required is the investigation date, and the final date is the anticipated compliance date.

## Avoided Costs

### ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$200	1-Jun-2012	24-Jan-2013	1.57	\$16	\$200	\$216
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

Estimated avoided cost (\$10 per inspection) to conduct the bi-weekly inspection of the Site. Date required is the date the violation was first documented and the final date is the investigation date.

**Approx. Cost of Compliance**

\$700

**TOTAL**

\$230



Screening Date 13-Mar-2013

Docket No. 2013-0511-WQ-E

PCW

Respondent Rainbow Landscape Materials, LLC

Policy Revision 3 (September 2011)

Case ID No. 46436

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105695563

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 6

Rule Cite(s)

Tex. Water Code § 26.121(a)

Violation Description

Failed to prevent the discharge of sediment into or adjacent to water in the state. Specifically, the disturbed area had not been properly stabilized and sufficient erosion controls were not utilized resulting in sediment leaving the Site and impacting nearby property.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 5.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

## Violation Events

Number of Violation Events 1

48 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$1,250

One quarterly event is recommended from the investigation date of January 24, 2013 to the screening date of March 13, 2013.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDP RP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$48

Violation Final Penalty Total \$1,343

This violation Final Assessed Penalty (adjusted for limits) \$1,343

# Economic Benefit Worksheet

**Respondent** Rainbow Landscape Materials, LLC

**Case ID No.** 46436

**Reg. Ent. Reference No.** RN105695563

**Media** Water Quality

**Violation No.** 6

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	24-Jan-2013	15-Sep-2013	0.64	\$48	n/a	\$48

Notes for DELAYED costs

Estimated cost to develop and implement procedures to eliminate the reoccurrence of discharges from the Site by stabilizing the disturbed area and utilizing erosion control measures. Date required is the investigation date and the final date is the anticipated compliance date.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

**TOTAL**

\$48



# Compliance History Report

**PUBLISHED** Compliance History Report for CN603453036, RN105695563, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

<b>Customer, Respondent, or Owner/Operator:</b>	CN603453036, Rainbow Landscape Materials, LLC	<b>Classification:</b> SATISFACTORY	<b>Rating:</b> 8.00
<b>Regulated Entity:</b>	RN105695563, RAINBOW LANDSCAPE MATERIALS	<b>Classification:</b> SATISFACTORY	<b>Rating:</b> 8.00
<b>Complexity Points:</b>	0	<b>Repeat Violator:</b>	NO
<b>CH Group:</b>	14 - Other		
<b>Location:</b>	3916 E HIGHWAY 67, RAINBOW TX 76077 SOMERVELL, TX, SOMERVELL COUNTY		
<b>TCEQ Region:</b>	REGION 04 - DFW METROPLEX		
<b>ID Number(s):</b>			

<b>Compliance History Period:</b>	September 01, 2007 to August 31, 2012	<b>Rating Year:</b> 2012	<b>Rating Date:</b> 09/01/2012
<b>Date Compliance History Report Prepared:</b>	March 11, 2013		
<b>Agency Decision Requiring Compliance History:</b>	Enforcement		
<b>Component Period Selected:</b>	March 11, 2008 to March 11, 2013		
<b>TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.</b>			
<b>Name:</b> Jorge Ibarra, P.E.	<b>Phone</b>	(817) 588-5890	

## Site and Owner/Operator History:

- |  |     |
|--|-----|
| 1) Has the site been in existence and/or operation for the full five year compliance period?       | YES |
| 2) Has there been a (known) change in ownership/operator of the site during the compliance period? | NO  |
| 3) If YES for #2, who is the current owner/operator?   | N/A |
| 4) If YES for #2, who was/were the prior owner(s)/operator(s)?                                     | N/A |
| 5) If YES, when did the change(s) in owner or operator occur?                                      | N/A |

## Components (Multimedia) for the Site Are Listed in Sections A - J

**A. Final Orders, court judgments, and consent decrees:**  
N/A

**B. Criminal convictions:**  
N/A

**C. Chronic excessive emissions events:**  
N/A

**D. The approval dates of investigations (CCEDS Inv. Track. No.):**  
N/A

## **E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

- |   |              |  |                 |          |
|---|--------------|--|-----------------|----------|
| 1 | Date:        | 04/23/2012   | (997766)        |          |
|   | Self Report? | NO   | Classification: | Moderate |
|   | Citation:    | 30 TAC Chapter 281, SubChapter A 281.25(a)(4)  |                 |          |
|   | Description: | Failure to obtain permit coverage for the site. At the time of the investigation, it was noted that the operator did not have permit coverage for the site and no SWPPP was available. |                 |          |
|   | Self Report? | NO   | Classification: | Moderate |
|   | Citation:    | TWC Chapter 26 26.121  |                 |          |

Description: Failure to prevent unauthorized discharges into or adjacent to any water in the state resulted in non-compliance with Texas Water Code Chapter 26.121. On April 12, 2012, evidence was found that sediment was discharged from the property. Sediment was documented leaving the site and depositing onto a nearby property and along the north beach of the Brazos River.

**F. Environmental audits:**

N/A

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
RAINBOW LANDSCAPE  
MATERIALS, LLC  
RN105695563**

§  
§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2013-0511-WQ-E**

### **I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Rainbow Landscape Materials, LLC ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a construction site at 3916 East Highway 67 in Rainbow, Somervell County, Texas (the "Site").
2. The Respondent has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about March 17, 2013.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Nine Thousand Four Hundred Thirty-Five Dollars (\$9,435) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Two Hundred Fifty-

Eight Dollars (\$1,258) of the administrative penalty and One Thousand Eight Hundred Eighty-Seven Dollars (\$1,887) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Six Thousand Two Hundred Ninety Dollars (\$6,290) of the administrative penalty shall be payable in five monthly payments of One Thousand Two Hundred Fifty-Eight Dollars (\$1,258) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:
  - a. By February 11, 2013, began making the storm water pollution prevention plan ("SWP3") readily available at the Site;
  - b. By February 22, 2013:
    - i. Posted a construction site notice at the Site in a location where it is safely and readily available for viewing; and
    - ii. Included a detailed site map in the SWP3.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have:

1. Failed to post the construction site notice at the Site in a location where it is safely and readily available for viewing by the general public, local, state, and federal authorities, prior to commencing construction, and to maintain the notice at that location until completion of the construction activity, in violation of Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR150000, Part II, Section E.2.(b), Obtaining Authorization to Discharge, and 30 TEX. ADMIN. CODE § 281.25(a)(4), as documented during an investigation conducted on January 24, 2013.
2. Failed to make the SWP3 readily available at the time of an on-site inspection, in violation of TPDES General Permit No. TXR150000, Part III, Section D.1., Plan Review and Making Plans Available, and 30 TEX. ADMIN. CODE § 281.25(a)(4), as documented during an investigation conducted on January 24, 2013.
3. Failed to include a description of the intended schedule or sequence of activities that will disturb soils for major portions of the Site in the SWP3, in violation of TPDES General Permit No. TXR150000, Part III, Section F.1.(c), Contents of SWP3, and 30 TEX. ADMIN. CODE § 281.25(a)(4), as documented during an investigation conducted on January 24, 2013.
4. Failed to include data describing the soil or the quality of any discharge from the Site in the SWP3, in violation of TPDES General Permit No. TXR150000, Part III, Section F.1.(e), Contents of SWP3, and 30 TEX. ADMIN. CODE § 281.25(a)(4), as documented during an investigation conducted on January 24, 2013.
5. Failed to include a map showing the general location of the Site in the SWP3, in violation of TPDES General Permit No. TXR150000, Part III, Section F.1.(f), Contents of SWP3, and 30 TEX. ADMIN. CODE § 281.25(a)(4), as documented during an investigation conducted on January 24, 2013.
6. Failed to include a detailed site map in the SWP3, in violation of TPDES General Permit No. TXR150000, Part III, Section F.1.(g), Contents of SWP3, and 30 TEX. ADMIN. CODE § 281.25(a)(4), as documented during an investigation conducted on January 24, 2013.
7. Failed to properly maintain control measures, in violation of TPDES General Permit No. TXR150000, Part III, Section F.2.(a)(ii), General Requirements, and 30 TEX. ADMIN. CODE § 281.25(a)(4), as documented during an investigation conducted on January 24, 2013. Specifically, the silt fence located on the south side of the property had fallen down and large patches of vegetation had not been established on the slope.
8. Failed to inspect disturbed areas of the construction Site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, discharge locations, and structural controls for evidence of, or the potential for, pollutants entering the drainage system, in violation of TPDES General Permit No. TXR150000, Part III, Section F.7.(a), Inspection of Controls, and 30 TEX. ADMIN. CODE § 281.25(a)(4), as documented during an investigation conducted on January 24, 2013. Specifically, a review of the bi-weekly site inspection reports revealed that the site inspections were not conducted for solid waste, hazardous waste, sanitary/septic, offsite storage erosion

controls, hazardous materials storage, and curb inlet protection for the period of June 1, 2011 through January 24, 2013.

9. Failed to prevent the discharge of sediment into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on January 24, 2013. Specifically, the disturbed area had not been properly stabilized and sufficient erosion controls were not utilized, resulting in sediment leaving the Site and impacting nearby property.

### **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

### **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Rainbow Landscape Materials, LLC, Docket No. 2013-0511-WQ-E" to:

Financial Administration Division, Revenue Operations Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 15 days after the effective date of this Agreed Order:
    - i. Include a description of the intended schedule or sequence of activities that will disturb soils for major portions of the Site in the SWP3, in accordance with TPDES General Permit No. TXR150000, Part III, Section F.1.(c);
    - ii. Include data describing the soil or the quality of any discharge from the Site in the SWP3, in accordance with TPDES General Permit No. TXRX150000, Part III, Section F.1.(e); and
    - iii. Include a map showing the general location of the Site in the SWP3, in accordance with TPDES General Permit No. TXR150000, Part III, Section F.1.(f).



- b. Within 30 days after the effective date of this Agreed Order, begin inspecting disturbed areas of the Site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, discharge locations, and structural controls for evidence of, or the potential for, pollutants entering the drainage system, in accordance with TPDES General Permit No. TXR150000, Part III, Section F.7.(a);
- c. Within 45 days after the effective date of this Agreed Order, repair the silt fence and establish vegetation on the slope;
- d. Within 60 days after the effective date of this Agreed Order, develop and implement procedures to eliminate the reoccurrence of discharges from the Site by stabilizing the disturbed area and utilizing erosion control measures; and
- e. Within 75 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.d. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Water Section Manager  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

- 3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.

4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
For the Executive Director

11/1/13  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.


I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:


- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
Signature

6/18/13  
Date

  
Name (Printed or typed)  
Authorized Representative of  
Rainbow Landscape Materials, LLC

  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.